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FEDEX KINKO'S OFFICE AND PRINT SERVICES, INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

STEPHEN WHITEWAY, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

FEDEX KINKO'S OFFICE AND PRINT  
SERVICES, INC., and DOES 1 through 25,  
inclusive,

Defendants.

**Case No. C 05-02320 SBA**

**STIPULATION STAYING MUTUAL  
CLASS DISCOVERY AND ORDER**

Date Action Filed: May 19, 2005  
Trial Date: September 10, 2007

This stipulation is entered into by and among Plaintiffs Stephen Whiteway ("Mr. Whiteway") and the Class and Defendant FedEx Kinko's and Print Service, Inc. ("FedEx Kinko's") through their respective attorneys of record.

WHEREAS on September 28, 2006, FedEx Kinko's noticed for hearing on November 28, 2006, its motion to stay the entire proceeding until the Ninth Circuit resolves its petition for permission to appeal this Court's September 14, 2006 Order granting class certification;

WHEREAS Plaintiff Stephen Whiteway ("Mr. Whiteway") opposes the stay as to his individual claim;

WHEREAS the parties have agreed that the resolution of Mr. Whiteway's claim should proceed even if the Ninth Circuit were to grant permission for FedEx Kinko's to appeal the class certification decision;

1 WHEREAS the parties believe that the Ninth Circuit will have decided at least the petition  
2 within the next 120 days;

3 IT IS THEREFORE HEREBY STIPULATED by and among Plaintiffs and Defendant:

- 4 1. All class discovery as to the class members shall be stayed until the Ninth Circuit resolves  
5 FedEx Kinko's petition for permission to appeal or the Ninth Circuit resolves FedEx Kinko's  
6 appeal, whichever date is later;
- 7 2. Class discovery will commence immediately upon the later of these two dates;
- 8 3. Rather than close on 12/15/06, discovery will close 90 days after the date referenced in  
9 paragraph 2;
- 10 4. FedEx Kinko's will have 30 days from the date referenced in paragraph 2 to respond to the  
11 discovery requests concerning classwide issues that are contained in the discovery served by  
12 Mr. Whiteway on September 28, 2006;
- 13 5. Mutual discovery will continue as to Mr. Whiteway's individual claim;
- 14 6. Barring any unforeseen events, the trial date set in the Order for Pretrial Preparation  
15 (September 7, 2007) shall not change for Mr. Whiteway's individual claim;
- 16 7. During the stay, agents of FedEx Kinko's or FedEx Kinko's counsel may contact the Class  
17 members in the ordinary course of business but may not communicate with Class members to  
18 gather information relating to the substance of their claims;
- 19 8. In an effort to conserve the parties' and the Court's resources, the parties agree to modify the  
20 expert disclosure schedule as follows:

21 Plaintiff shall designate experts by 2/15/07 (modified from 12/15/06)

22 Defendant shall designate experts by 3/1/07 (modified from 12/29/06)

23 Expert discovery shall be completed by 4/15/07 (modified from 2/15/07)

- 24 9. At present, the parties believe the other deadlines set forth in the Order for Pretrial  
25 Preparation can be met.

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1 This stipulation is entered into without prejudice to any party's seeking further refinement or  
2 modification of the stay.

3 Dated: October \_\_, 2006

WINSTON & STRAWN LLP

5 By: \_\_\_\_\_

Jonathan M. Cohen, Esq.  
Krista M. Enns, Esq.

7 Attorneys for Defendant  
8 FEDEX KINKO'S OFFICE AND PRINT  
9 SERVICES, INC.

11 Dated: October \_\_, 2006

SCOTT COLE & ASSOCIATES, APC


13 \_\_\_\_\_  
14 Scott Edward Cole, Esq.  
15 Matthew R. Bainer, Esq.  
16 Clyde H. Charlton, Esq.

Attorneys for Plaintiffs  
STEPHEN WHITEWAY AND THE CLASS

18 **ORDER**

19 IT IS SO ORDERED.

20 Dated: October 12, 2006

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22 \_\_\_\_\_  
23 Hon. Sandra B. Armstrong  
24 U.S. District Court Judge  
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